

OPEN MEETING ITEM
ORIGINAL



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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



ARIZONA CORPORATION COMMISSION

DATE: March 21, 2006

DOCKET NO: W-01445A-05-0700 and WS-01775A-05-0700

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

ARIZONA WATER COMPANY/FRANCISCO GRANDE UTILITY COMPANY
(CC&N TRANSFER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MARCH 30, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 4 AND 5, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE JOINT APPLICATION
9 OF: (1) FRANCISCO GRANDE UTILITY
10 COMPANY, AN ARIZONA CORPORATION, TO
11 TRANSFER A PORTION OF ITS EXISTING
12 CERTIFICATE OF CONVENIENCE AND
NECESSITY TO ARIZONA WATER COMPANY,
AN ARIZONA CORPORATION; (2) ARIZONA
WATER COMPANY TO INCLUDE
CERTIFICATED AREA TO BE TRANSFERRED
BY FRANCISCO GRANDE UTILITY COMPANY
IN ARIZONA WATER COMPANY'S CASA
GRANDE CERTIFICATE OF CONVENIENCE
AND NECESSITY.

DOCKET NO. W-01445A-05-0700
DOCKET NO. WS-01775A-05-0700

DECISION NO. _____

OPINION AND ORDER

13 DATE OF HEARING: February 23, 2006
14 PLACE OF HEARING: Phoenix, Arizona
15 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
16 APPEARANCES: Robert W. Geake, on behalf of Arizona Water
17 Company; and
18 Ron Burks, on behalf of Francisco Grande Utility
19 Company (telephonically); and
20 David Ronald, Staff Attorney, Legal Division on behalf
21 of the Utilities Division of the Arizona Corporation
22 Commission.

23 **BY THE COMMISSION:**

24 On October 4, 2005, Francisco Grande Utility Company ("Francisco") and Arizona Water
25 Company ("AWC") ("Joint Applicants") jointly filed with the Arizona Corporation Commission
26 ("Commission") to transfer a portion of Francisco's Certificate of Convenience and Necessity
27 ("Certificate" or "CC&N") to AWC and for AWC to include the same area in AWC's Casa Grande
28 Certificate.

On November 3, 2005, the Commission's Utilities Division ("Staff") filed an Insufficiency

1 Letter, indicating that the Joint Applicant's application did not meet sufficiency requirements under
2 the Arizona Administrative Code ("A.A.C.").

3 On November 10 and 14, 2005, the Joint Applicants provided additional documentation in
4 support of their application.

5 On December 9, 2005 Staff filed a Letter of Sufficiency, stating the application had met the
6 sufficiency requirements as outlined by the A.A.C.

7 On December 14, 2005, a Procedural Order was issued setting a hearing to commence on
8 February 23, 2006 and setting other procedural deadlines.

9 On January 20, 2006, the Joint Applicants docketed notice of the hearing in accordance with
10 the A.A.C.

11 On January 27, 2006, Staff filed its Staff Report, recommending approval of the joint
12 application with conditions.

13 On February 23, 2006, a full public hearing was held as scheduled. AWC and Staff appeared
14 through counsel and presented evidence and testimony in the matter. Francisco appeared
15 telephonically and presented testimony. No members of the public appeared at the hearing. At the
16 conclusion of the hearing all matters were taken under advisement pending the submission of a
17 Recommended Opinion and Order to the Commission.

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Commission finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. AWC is an Arizona public service corporation in good standing with the Corporations
23 Division, authorized to provide water utility service to customers in various portions of Cochise,
24 Coconino, Gila, Maricopa, Navajo, Pima, Pinal and Yavapai Counties in Arizona. AWC provides
25 water utility service to more than 72,000 customers in Arizona.

26 2. Francisco is an Arizona public service corporation in good standing with the
27 Corporations Division, authorized to provide water and wastewater service in an area known as
28 Francisco Grande, which is located west of Casa Grande in Pinal County, Arizona. Francisco's

1 CC&N was granted in Decision No. 47711 (March 3, 1977).

2 3. On October 4, 2005, AWC and Francisco jointly filed an application to transfer one
3 and one half square miles of Francisco's existing CC&N to AWC and for AWC to include the same
4 area in AWC's Casa Grande CC&N. The two water companies are located west of the City of Casa
5 Grande in Pinal County.

6 4. On December 9, 2005, Staff filed a Letter of Sufficiency stating the Utilities had met
7 the sufficiency requirements as outlined in A.A.C.

8 5. On December 14, 2005, a Procedural Order was issued setting a hearing to commence
9 on February 23, 2006 and setting other procedural deadlines.

10 6. On January 20, 2006, the Utilities docketed notice of the hearing in accordance with
11 the A.A.C.

12 7. On January 27, 2006, Staff filed its Staff Report recommending approval of the
13 application subject to conditions.

14 8. On February 23, 2006, a full public hearing was held as scheduled. Appearances were
15 entered and evidence and testimony were presented by Michael Whitehead, Vice President of
16 Engineering for AWC, and Ron Burks, Vice President for Francisco. Staff appeared through counsel
17 and presented testimony and evidence.

18 9. At hearing, AWC's witness testified that the Joint Applicants are seeking to transfer
19 from Francisco to AWC the land located on the southeast quarter of Section 30, all of Section 3, in
20 Township 6 South, Range 5 East and the northeast quarter of Section 36, located in Township 6
21 South, Range 4 East and which is more fully described in Exhibit A, attached hereto and incorporated
22 herein by reference.

23 10. AWC's witness further testified that AWC had received a request from BCY, Ltd. and
24 Cache Investments, LLC ("developers") to provide water utility service to the above mentioned area
25 because they intended to develop a master planned community comprised of 950 acres. The
26 proposed community will have approximately 2,800 units comprised of residential and commercial
27 properties and schools.

28 11. Francisco's witness appeared telephonically at the hearing and testified to its support

1 of the joint application.

2 12. According to Staff's Report, Francisco's water system is comprised of three wells, two
3 storage tanks, four booster pumps, a 12,000 gallon pressure tank and 11,880 feet of 6, 8, and 10-inch
4 water mains serving one service connection, which is Francisco Grande Resort. Staff notes that
5 Francisco's wells are not in use and that water is being purchased from AWC.

6 13. Staff states that Francisco's plant is located on the property of the Francisco Grande
7 Resort and the Resort is located within AWC's CC&N. At hearing, AWC's witness stated that the
8 parties entered into a water system agreement in 2000, in which they intended to transfer all of the
9 certificated areas in the agreement under AWC's CC&N; however, one land owner objected to being
10 included in AWC's CC&N and his section of land was deleted. The deleted section of land is the
11 subject of this proceeding because it has been sold to a new property owner who has requested
12 service from AWC. Additionally, AWC's witness testified that the new property owner was in
13 negotiation with the City of Casa Grande to bring sewer service to the transfer area.

14 14. According to Staff's Report, AWC's Casa Grande System is comprised of 14 wells,
15 14.192 million gallons of storage capacity, and distribution system serving 18,314 service
16 connections as of September 2005. Based on historical growth rates, Staff anticipates that the
17 existing service area could grow to approximately 26,700 connections at the end of five years. AWC
18 has predicted an additional 25 connections for the requested transfer areas at the end of five years,
19 resulting in a projected total customer base of 26,725 at the end of five years. Staff concluded that the
20 existing system can serve approximately 22,100 connections.

21 15. AWC's application proposes to extend its water system into the transfer areas by
22 extending its distribution system. Staff concluded that the existing AWC system will have adequate
23 production and storage capacity to serve the existing CC&N and requested transfer areas within a
24 conventional five year planning period and can reasonably be expected to develop additional
25 production and storage as required in the future. Therefore, Staff recommends that AWC file with
26 Docket Control, as a compliance item in this docket, copies of the Arizona Department of
27 Environmental Quality ("ADEQ") Certificate of Approval to Construct ("ATC") for facilities needed
28 to serve the requested transfer areas within two years of the effective date of an order in this

1 proceeding.

2 16. According to the AWC's application, the proposed utility facilities will be financed
3 through advances in aid of construction or Main Extension Agreements ("MXA"). Staff recommends
4 that AWC file with Docket Control, as a compliance item in this docket, a Notice of Filing indicating
5 AWC has submitted for Staff's review and approval, a copy of the fully executed MXAs for water
6 facilities for the requested transfer areas within two years of a Decision in this case.

7 17. According to ADEQ Francisco's water system is inactive and therefore Francisco is
8 not required to meet compliance standards.

9 18. ADEQ reported that AWC's Casa Grande system has no deficiencies and that AWC is
10 delivering water that meets water quality standards as required by the A.A.C.

11 19. AWC is located within the Pinal Active Management Area ("AMA"). The Arizona
12 Department of Water Resources ("ADWR") has indicated that AWC is in compliance with Pinal
13 AMA requirements.

14 20. Staff recommends that AWC file with Docket Control, as a compliance item in this
15 docket, a copy of the developers' Certificate of Assured Water Supply for the requested transfer areas
16 where applicable or when required by statute, within two years of the effective date of a Decision in
17 this case.

18 21. According to Staff's Report, the Utilities Division Compliance Section, found no
19 outstanding ACC compliance issues for AWC.

20 22. On January 23, 2006 the U.S. Environmental Protection Agency ("EPA") reduced the
21 arsenic maximum containment level ("MCL") in drinking water from 50 micrograms per liter
22 ("µg/l") or parts per billion ("ppb") to 10 µg/l. AWC's wells show arsenic levels from 7 ppb to 45
23 ppb. In Decision No. 67518 (January 20, 2005), the Commission approved an accounting order
24 authorizing the deferral of certain costs and expenses related to arsenic treatment that AWC expects
25 to incur for its Western Group. At hearing, AWC's witness testified that AWC will be installing two
26 principal treatment plants, which will serve multiple wells. He further testified that one of the
27 principle wells is about 85 percent complete and the other is 50 percent complete and that the
28 Company expected to start treating arsenic in its Casa Grande system by the end of the 2006.

1 23. AWC has an approved Curtailment Plan Tariff that was approved in Decision No.
2 66235 (July 23, 2004).

3 24. AWC will charge its authorized rates and charges in the transfer areas.

4 25. Pursuant to A.R.S. § 40-282 (B) every applicant for a CC&N and CC&N extension is
5 required to submit to the Commission evidence that it has obtained the required consent, franchise or
6 permit from the proper authority. According to Staff's Report the requested transfer areas are located
7 within unincorporated areas in Pinal County. AWC filed its franchise agreement with its application.

8 26. Staff recommends that the Commission approve the joint application by AWC and
9 Francisco to transfer a portion of Francisco's existing water CC&N to AWC and for AWC to include
10 the same area in its Casa Grande CC&N subject to compliance with the following conditions:

- 11 1. To require AWC to charge its authorized rates and charges in the requested
12 transfer areas.
- 13 2. To require AWC to file with Docket Control, as a compliance item in this
14 docket, copies of ADEQ's ATC for facilities needed to serve the requested
15 transfer areas within two years of the effective date of a Decision in this case.
- 16 3. To require AWC to file with Docket Control, as a compliance item in this
17 docket, a Notice of Filing indicating AWC has submitted for Staff's review
18 and approval, a copy of the fully executed MXAs for water facilities for the
19 requested transfer areas within two years of a Decision in this matter.
- 20 4. To require AWC to file with Docket Control, as a compliance item in this
21 docket, a copy of the developers' Certificate of Assured Water Supply for the
22 requested transfer areas where applicable or when required by statute, within
23 two years of the effective date of a final Decision in this matter.

24 27. Staff further recommends that the Commission's Decision granting the requested
25 CC&N transfer be considered null and void, after due process, should AWC fail to meet Conditions
26 No. 2, 3, and 4 listed above within the time specified.

27 28. Because an allowance for the property tax expense of AWC is included in the
28 Company's rates and will be collected from its customers, the Commission seeks assurances from the

1 Companies that any taxes collected from ratepayers have been remitted to the appropriate taxing
2 authority. It has come to the Commission's attention that a number of water companies have been
3 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
4 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure AWC
5 should annually file, as part of its annual report, an affidavit with the Utilities Division attesting that
6 the Company is current in paying its property taxes in Arizona.

7 **CONCLUSIONS OF LAW**

8
9 1. Francisco Grande Utility Company and Arizona Water Company are public service
10 corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and
11 40-282.

12 2. The Commission has jurisdiction over Francisco Grande Utility and Arizona Water
13 Company and the subject matter of the application.

14 3. Notice has been provided as required by law.

15 4. Arizona Water Company is a fit and proper entity to receive Francisco Grande's
16 CC&N, and the CC&N is in the public interest.

17 5. Staff's recommendations, as set forth above should be adopted.

18
19 **ORDER**

20 IT IS THEREFORE ORDERED that the joint application by Francisco Grande Utility
21 Company and Arizona Water Company to transfer the areas described in Exhibit A, attached hereto
22 and incorporated herein by reference, from Francisco Grande Utility Company's existing water
23 Certificate of Convenience and Necessity to Arizona Water Company and for Arizona Water
24 Company to include the same area in its Casa Grande Certificate of Convenience and Necessity is
25 hereby granted subject to the following four ordering paragraphs.

26 IT IS FURTHER ORDERED that Arizona Water Company shall charge its authorized rates
27 and charges in the requested transfer area.
28

1 IT IS FURTHER ORDERED that Arizona Water Company shall file with Docket Control, as
 2 a compliance item in this docket, copies of the Arizona Department of Environmental Quality's
 3 Approval to Construct for facilities needed to serve the requested transfer areas within two years of
 4 the effective date of the Decision in this Order.

5 IT IS FURTHER ORDERED that Arizona Water Company shall file with Docket Control, as
 6 a compliance item in this docket, a Notice of Filing indicating Arizona Water Company has
 7 submitted for Staff's review and approval, a copy of the fully executed main extension agreements
 8 for water facilities for the requested transfer areas within two years of the effective date of the
 9 Decision in this Order.

10 IT IS FURTHER ORDERED that Arizona Water Company shall file with Docket Control, as
 11 a compliance item in this docket, a copy of the developers' Certificate of Assured Water Supply for
 12 the requested transfer areas where applicable or when required by statute, within two years of the
 13 effective date of the Decision in this Order.

14 IT IS FURTHER ORDERED that the Certificate of Convenience and Necessity granted
 15 herein shall be considered null and void, after due process, if Arizona Water Company fails to meet
 16 the conditions in the three above ordering paragraphs.

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1 IT IS FURTHER ORDERED that Arizona Water Company shall file as a part of its annual
2 report, an affidavit with the Utilities Division attesting that the Company is current on paying its
3 property taxes in Arizona.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN

COMMISSIONER

10 COMMISSIONER

COMMISSIONER

COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this ____ day of _____, 2006.

17 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

19 DISSENT _____

21 DISSENT _____

22 YBK:mj
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1 SERVICE LIST FOR: ARIZONA WATER COMPANY et al.

2 DOCKET NO.: W-01445A-04-0700 et al.

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4 Arizona Water Company
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CC&N This Application

The Northeast quarter of Section 36, Township 6 South, Range 4 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona; And:

The Southeast Quarter of Section 30 and all of Section 31, Township 6 South, Range 5 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

EXHIBIT A

W:\AWC EXHIBITS\CC&N\2005\CG\WAKE UP EXTENSION\CCN EXHIBIT 2 CLYDE BARNEY.DOC
08:09 | 15:53 | 8/30/05

DECISION NO. _____